IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CR.A. NO. 394 /2002

APPELLANT : (IN JAIL) Smt. Devki bai w/o Phekuram, aged about 32 years, R/o village - Belar-Bahra P.S. Sihawa Tah. Dhamtari Distt. Raipur (C.G.)

Vs.

RESPONDENT : The State of C.G. Through P.S. Sihawa Distt. Raipur (C.G.)

S.T. No. 348/94

U/s 302, 201/34 of I.P.C.

P.S. Sihawa

Court of A.S.J. Dhamtari

CRIMINAL APPEAL U/S 374 OF CR.P.C.

M.F.A. 281/3

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: -

HON'BLE SHRI K.H.N. KURANGA, C.J.

AND HON'BLE SHRI L.C. BHADOO, J.

CRIMINAL APPEAL NO.268 OF 1996

Raj Kumar

Versus

State of Madhya Pradesh (now Chhattisgarh)

CRIMINAL APPEAL NO.269 OF 1996

Feku Ram

Versus

State of Madhya Pradesh (now Chhattisgarh)

AND

CRIMINAL APPEAL NO.794 OF 2002

Smt. Devki Bai

Versus

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-

J U D G E

15th July, 2003

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

POST FOR JUDGMENT ON 28th July, 2003

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: -

HON'BLE SHRI K.H.N. KURANGA, C.J.

AND HON'BLE SHRI L.C. BHADOO, J.

CRIMINAL APPEAL NO.268 OF 1996

Raj Kumar

Versus

State of Madhya Pradesh (now Chhattisgarh)

CRIMINAL APPEAL NO.269 OF 1996

Feku Ram

Versus

State of Madhya Pradesh (now Chhattisgarh)

AND

CRIMINAL APPEAL NO.794 OF 2002

Smt. Devki Bai

Versus

State of Chhattisgarh

Present: Mrs. Kiran Jain, Advocate for the appellants.

Mr. Praveen Das, Panel Lawyer for the State/respondent.

J U D G M E N T

(Delivered on 28/4 July, 2003)

The following judgment of the Court was delivered by *Justice L.C.Bhadoo*: -

1. All the above three criminal appeals are arising out of the same judgment dated 18th January, 1996, passed by the Additional /

Sessions Judge, Dhamtari, Distt. Raipur and they relate to the same incident. As all the three accused/appellants were accused in the same case i.e. Sessions Trial No.348/94, these three appeals are being disposed of by this common judgment.

2. The accused/appellants have preferred these criminal appeals under Section 374 (2) of the Cr.P.C. being aggrieved by the judgment of conviction and sentence dated 18th January, 1996, passed by the Additional Sessions Judge, Dhamtari, Distt. Raipur, in Sessions Trial No.348/94, by which the learned Additional Sessions Judge after holding the accused/appellants guilty of the commission of the offences under Sections 302 & 201 of the I.P.C. sentenced each of them to undergo imprisonment for life and to undergo rigorous imprisonment for two years, respectively. Both the sentences were directed to run concurrently.

3. Briefly stated, the prosecution case is that accused Feku Ram, resident of Village: Belarbahra lodged a report at Police Station: Sihawa, Distt. Raipur on 06.06.94 at about 8.30 p.m. that on the previous day morning i.e. on 05.06.94 there was a quarrel between the wife of his younger brother namely, Ramola Bai and her husband Raj Kumar. Raj Kumar said something to Ramola Bai regarding her illicit relations with one Jahanghasia. Thereafter, Ramola Bai died by hanging herself in the house. Upon receiving this oral report, merg intimation No.19/94 under Section 174 of the Cr.P.C. was

(51)

registered. C.S. Netam, the Sub Inspector, Police Station: Sihawa, Tehsil: Dhamtari reached village Belarbahra and after giving notices Ex.P-5 to witnesses, prepared Panchanama Ex.P-6 of the dead body of Ramola Bai. At that time, the dead body of Ramola Bai was found hanging in the room and her knees were touching the ground. Some pieces of broken bangles and also match sticks were lying there. Blisters and burning signs were present on the thigh region of the deceased. The palms of both the hands were also found burnt. The anus and uterus were coming out. After preparation of the Panchanama of the dead body, the post mortem of the dead body was conducted by Dr. Padmakar Mishra (PW-13) and the site plan of the place of incident Ex.P-21 was prepared. The broken bangle pieces were seized under Ex.P-7. On 07.06.94 accused Devki Bai gave a memorandum Ex.P-10 and in pursuance of that memorandum one utensil meant for preparation of tea was recovered at the instance of accused Devki Bai under Ex.P-11. On the same day at 12:30 p.m. accused Feku Ram gave a memorandum Ex.P-12 and in pursuance of that one bamboo stick was seized under Ex.P-13. The blood stained soil was seized from the room of accused Raj Kumar under Ex.P-14 and the soil of the place of incident was seized under Ex.P-15. On 06.06.94 one lamp made of solution box and three half burnt match sticks were seized under Ex.P-8. Broken bangle pieces were also seized under Ex.P-9. The clothes of Ramola Bai were

(52)

seized under Ex.P-16. All these articles were sent for chemical examination from where report Ex.P-24 was received. After completion of the investigation, charge sheet was filed against the accused/appellants for the commission of the offences punishable under Sections 302 & 201 of the I.P.C.

4. The charges for the offences punishable under Sections 302 & 201 of the I.P.C. were framed against the accused/appellants. The accused/appellants denied the charges and claimed to be tried.

5. The prosecution in order to prove the offences against the accused/appellants examined in all fourteen witnesses. The statements of the accused persons were recorded under Section 313 of the Cr.P.C. The accused persons denied the prosecution evidence appearing against them. Accused Devki Bai said that at the time of the incident she was not present in the house as she had gone to her agricultural field, she has been falsely implicated in the case and she is innocent. Similarly, accused Feku Ram also denied the evidence of the prosecution and said that at the time of the incident on the fateful day he had gone to the forest along with Bhuneshwar Sahu for collecting the wood and when he returned in the evening his brother informed him that Ramola Bai has committed suicide. Accused Raj Kumar also said that on the fateful day in the morning he went to Village: Aawamuda for cutting hairs of the villagers as he was doing the work of Barber. Raj Kumar further said that when he

(53)

returned to the house he saw the dead body of his wife Ramola Bai. He informed his brother Feku Ram and thereafter, Feku Ram went to the village Kotwar to inform him about the incident. In their defence, the accused persons examined DW-1 Thanvarsingh Dhruv and DW-2 Bhuneshwar. The learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused persons and after believing the evidence of the prosecution convicted and sentenced the accused persons as mentioned above.

6. We have heard the learned counsel for the accused/appellants and learned Panel Lawyer for the State/respondent.

7. As far as the nature of death of Ramola Bai being homicidal is concerned, the learned counsel for the accused/appellants has not disputed this fact. PW-3 Dr. Kishore Som and PW-13 Dr. Padmakar Mishra who conducted the post mortem on the dead body of Ramola Bai have stated that on the left cheek of the deceased abrasions and swelling were present; there was a ligature mark on the neck and lines were present below the ligature mark; there were abrasions and swelling on the neck; ecchymosis bruises were present on the neck transversely; anti-mortem type scalds (burn injury) were present on the pelvic region; whole lower genital organs (vagina), anal and both palms were found burnt; thyroid cartilage was ruptured; ecchymosis bruises were present on the front of neck; and anti-mortem burn

injuries (scald), redness and blisters were present on the pelvic region and lower extremity (front & back) of palm. The doctor opined that the cause of the death was due to asphyxia as a result of strangulation and the nature of the death was homicidal. Apart from strangulation, the burn injuries were present on anus and vaginal area. Blisters were also present. The Doctors have stated that these injuries could be caused by any liquid substance and there was 40% burns on the lower portion of the body. The laceration was present in the anus and vaginal canal. The Doctors further stated that some hard object was inserted in the anus and vaginal canal. These injuries coupled with the evidence of strangulation show that the death of deceased Ramola Bai was homicidal and not suicidal.

8. Now coming to the question of involvement of the accused persons in the murder of Ramola Bai is concerned, most of the prosecution witnesses have turned hostile and the whole case of the prosecution rests on circumstantial evidence only.

9. The law on the point is that in a case based on the circumstantial evidence the Court can record conviction but it must satisfy itself that the circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable

(55)

of any explanation which is not consistent with the hypothesis of the guilt of the accused.

10. The first circumstance, as per the prosecution evidence, is that PW-2 Johansingh saw accused Devki Bai abusing the deceased and saying that Ramola Bai will be murdered and a stick will be inserted in her anus. Similarly, PW-7 Radheylal heard the cries 'Save Save' from the house of accused Feku Ram to the effect. PW-8 Repotin has stated that on the fateful day at about 3 p.m. when she was returning from the forest she heard the noise from the house of Feku Ram. The evidence of these three witnesses has been relied upon by the trial Court while convicting the accused/appellants. As far as the statement of PW-2 Johansingh is concerned, even though this witness has turned hostile, he has stated that a year back Ramola Bai was doubting that her husband Raj Kumar and sister in law Devki Bai have illicit relations. Devki Bai used to ask Ramola Bai on whom she was doubting and also used to abuse Ramola Bai and said that Ramola Bai will be killed and a Danda will be inserted in her anus. This dispute was going on for the last one year. PW-2 heard these conversations one year before the death of Ramola Bai and thereafter, he came to know that Ramola Bai has died by hanging. In the cross examination, this witness has stated that he has not disclosed this fact to any person in the village because this was their personal affair. If we scrutinize this evidence, no inference can be

drawn on the basis of the same that the accused persons were the persons who caused the murder of the deceased, because this witness has stated that he heard Devki Bai abusing Ramola Bai and further he said that this thing he heard one year before the date of the death of the deceased. Therefore, this witness has not stated that he heard or saw accused Devki Bai abusing or threatening Ramola Bai immediately before the date of the death of Ramola Bai.

11. As far as the evidence of PW-7 Radheylal is concerned he has simply stated that last year at the time of the season of sowing of paddy, when he was going to the market he heard the scream 'Save Save', but he had not gone inside the house of Feku Ram. Therefore, the evidence of this witness is of no help to the prosecution as neither he had gone into the house and saw the incident as to who was assaulting whom and who was crying for help nor this witness has stated that the accused persons were assaulting Ramola Bai or the scream was of Ramola Bai.

12. Now as far as the evidence of PW-8 Repotin Bai is concerned, she has stated that on Sunday at about 6 a.m. some quarrel took place between Raj Kumar and his wife Ramola Bai on an issue concerning the illicit relations of Raj Kumar with Devki Bai and in the evening at about 3 p.m. when she was returning from the forest, she heard Feku Ram and Raj Kumar saying kill Ramola Bai. She also heard the voice of Devki Bai who was saying to kill Ramola Bai. She also heard the

(57)

scream of Ramola Bai 'Save Save'. As she was frightened, she went away towards the colony. In cross examination, this witness has said that she heard the voice from the outside and she had not gone inside the house of Feku Ram. She only heard the voice, but she had not disclosed this fact to the Police when the Police came to the village and for the first time she has stated this in the Court. In view of the above reasons, it is not possible to hold that the accused persons were the only persons who assaulted deceased Ramola Bai for the reason that she had not entered the house of Feku Ram and not stated that she could recognize the voice of Feku Ram, Raj Kumar and Devki Bai. Moreover, in Para 3 of her evidence she has stated that she has not disclosed this fact to any one, even to the Police when the Police came to the village for investigation and for the first time she was disclosing this fact before the Court. She had not disclosed this fact to any one till her evidence was recorded before the Court. Under these circumstances it is not known how she was made a witness in this case. She has not stated that she was familiar with the voice of the accused persons and therefore, she was able to recognize their voice. Moreover, she has not stated that when Ramola Bai was asking for help why she has not informed the said fact to any one in the village. The only explanation given by her is that she was frightened. If she was frightened, then she has not explained as to why she came before the Court to give the/

evidence. In these circumstances, the evidence of this witness is not convincing and does not inspire confidence in the mind of the Court. This wavering statement cannot be made the basis for holding the accused/appellants guilty of such a heinous crime.

13. Now, coming to the question of recovery, as per the prosecution evidence, on the memorandum given by accused Devki Bai (Ex.P-10), the utensil meant for preparation of tea was recovered vide Ex.P-11 from the kitchen of the accused persons. Such utensils are generally found in every house and it is not understandable how the recovery of this utensil can connect accused Devki Bai with the murder of Ramola Bai. As far as the recovery of wooden Danda from accused/appellant Feku Ram is concerned, as per the report of the Chemical Examiner Ex.P-24, blood was found on this Danda, but recovery of this Danda itself is doubtful. PW-6 is the witness of this recovery memo Ex.P-13. The prosecution case is that, accused Feku Ram gave the memorandum Ex.P-12 and in pursuance of that the Danda was recovered vide Ex.P-13. But in cross examination, this witness (PW-6) has stated that the Danda was brought by accused Raj Kumar from the garden and at the time of investigation both the accused persons were with the Police. Further in Para 7, this witness has stated that it is correct to say that the Danda which was recovered from the garden was found in the corner of the garden. In Para 8, PW-6 has further stated that at the time of the recovery,

of the Danda, Feku Ram and Devki Bai were not in Police custody. In view of this evidence, the recovery of the Danda itself is doubtful. Therefore, on the basis of these recoveries, the accused cannot be connected with the murder of deceased Ramola Bai.

14. Now on the point that Ramola Bai was found dead in the house of the accused persons, the accused persons have given explanation that they were not present in the house as accused Feku Ram had gone to the forest for cutting wood; accused Devki Bai had gone to the agricultural field and accused Raj Kumar had gone to other village for cutting the hairs of the villagers and only when they returned in the evening that they came to know about this fact. There is no direct evidence adduced by the prosecution that the accused persons were present in the house. Only the evidence of PW-8 Repotin Bai remains. We have already recorded reasons for not placing reliance on her evidence.

15. Therefore, the prosecution has not been able to establish against the accused/appellants beyond reasonable doubt that they are the only persons who committed the murder of Ramola Bai. The circumstantial evidence adduced by the prosecution does not stand up to the test laid down by the Hon'ble Apex Court as stated above in the matter of placing reliance on the circumstantial evidence. On the basis of the circumstantial evidence adduced by the prosecution in the case it cannot be held that the accused persons are the only /

(60)

persons who had committed the murder of Ramola Bai. The trial Court has not properly appreciated the evidence of the witnesses. In view of what has been discussed above, the judgment of the trial Court is not based on the legal and convincing evidence. Therefore, the judgment of conviction and sentence passed by the trial Court cannot be sustained and the same is liable to be set aside.

16. In the result, the appeals of the accused/appellants succeed and they are allowed. The judgment of the trial Court dated 18th January, 1996, convicting and sentencing the accused/appellants for the commission of the offences under Sections 302 & 201 of the I.P.C. is set aside. The accused/appellants are acquitted of the charges under Sections 302 & 201 of the I.P.C. and they be set at liberty forthwith, if not required in any other case.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

Soma